

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FROSTINE NEWBERRY and RICHARD
NEWBERRY,

Plaintiffs,

V.

DISCOUNT WASTE, INC. and ROSA
LOPEZ, d/b/a A & R RENT-A-FENCE

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FRED OLIVIERI CONSTRUCTION
COMPANY

Defendants.

Civil Action No. 4:19-cv-147
Judge Mazzant

ORDER

Pending before the Court is Plaintiffs Frostine Newberry and Richard Newberry's Motion to Take Judicial Notice (Dkt. #90).¹ Having considered the motion and relevant pleadings, the Court finds that Plaintiffs motion should be **GRANTED**.

Plaintiffs request the Court to take judicial notice of Plano’s Code of Ordinances, Chapter 19, § 19-1: Obstruction of Streets, Alleys, Sidewalks, Parkway Areas or Public Grounds (“the Ordinance”). Defendant Rosa Lopez d/b/a A & R Rent-A-Fence (“A&R”) contends that permitting the Ordinance to be read to the jury would be misleading and, therefore, prejudicial to A&R because A&R did not install the fence on public property. It is readily apparent, however,

¹ This is a trip-and-fall case that arises from the injuries and damages Plaintiff Frostine Newberry allegedly suffered when she tripped and fell over protruding metal bars holding a temporary fence on a pedestrian sidewalk at the Legacy West Shopping Center. *See* (Dkt. #90 at ¶ 4).

the parties dispute whether A&R installed the fence on a public sidewalk. Therefore, the Court will not resolve this factual dispute; instead, the Court notes that this is a dispute for the jury to consider and decide. Accordingly, this Court takes judicial notice of the Ordinance.²

CONCLUSION

It is therefore **ORDERED** that Plaintiffs' Motion to Take Judicial Notice (Dkt. #90) is hereby **GRANTED**.

It is further **ORDERED** that the parties shall submit supplemental jury instructions no later than Wednesday, June 3, 2020, at 5 p.m.

SIGNED this 29th day of May, 2020.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

² See *Griffin v. City of Sugar Land, Tex.*, No. CV H-18-3121, 2019 WL 175098, at *2 (S.D. Tex. Jan. 11, 2019) (“Courts can take judicial notice of city ordinances”); *Matter of Waller Creek, Ltd.*, 867 F.2d 228, 238 n.14 (5th Cir. 1989) (taking judicial notice of city ordinance as a legislative fact).